

UNITED STATES OF AMERICA, <i>et al., ex rel.</i> , LAUREN KIEFF,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 03-12366-DPW
)	
WYETH,)	
)	
Defendant.)	
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UNITED STATES OF AMERICA, <i>et al., ex rel.</i> WILLIAM LACORTE,)	
)	
)	
Plaintiffs,)	
)	
v.)	Civil Action. No. 06-11724-DPW
)	
WYETH,)	
)	
Defendant.)	

Seventeen States including Colorado, Kansas, the Commonwealth of Kentucky, Maine, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, and Wyoming (collectively the “States” or “Intervening States”) hereby move for leave to intervene in the above captioned federal and state False Claims Act actions as a matter of right under Federal Rule of Civil Procedure 24(a)(2) (the “States’ Motion” or “Motion”) to assert their claims under their respective state laws. This Court

should grant the States' Motion because jurisdiction over the States' claims is expressly provided for under 31 U.S.C. § 3732(b), the Motion is timely, the States have direct substantial interests relating to the property or transaction that are the subject of the actions such that disposition of these actions may impair or impede the States' ability to protect those interests, and such interests may not be adequately represented by the existing parties.

PROCEDURAL BACKGROUND

These actions brought by *qui tam* plaintiffs ("Relators") against Wyeth were filed under seal pursuant to the False Claims Act. 31 U.S.C. § 3729, *et seq.* On May 8 and 11, 2009, this Court granted the United States' motions to unseal the actions in part. (03 Dkt. No. 77, 06 Dkt. No. 68.)¹ The United States filed its complaint on May 18, 2009. (03 Dkt. No. 99, 06 Dkt. No. 87.) Sixteen named Plaintiff States filed their complaint in intervention asserting their claims based upon their state False Claims Acts and other state laws on June 15, 2009.² (03 Dkt. No. 105, 06 Dkt. No. 93.) Service of the Plaintiff States' complaint on Wyeth was accomplished by an executed Waiver of Service filed on September 11, 2009. (03 Dkt. No. 117, 06 Dkt. No. 106.)

Wyeth moved to dismiss the federal government's complaint on July 29, 2009, pursuant to Fed. R. Civ. P. 12(b)(6). (03 Dkt. No. 111, 06 Dkt. No. 99.) The United States filed its opposition to Wyeth's motion and filed an amended complaint on September 14, 2009. (03 Dkt. Nos. 119, 120, 06 Dkt. Nos. 108, 109.) The Plaintiff States filed an amended complaint on October 9, 2009. (03 Dkt. No. 126, 06 Dkt. No. 115.) Wyeth filed a consolidated motion to dismiss the amended federal and state complaints on November 6, 2009. (03 Dkt. No. 135, 06 Dkt. No. 124.) The United States and Plaintiff States thereafter filed oppositions to Wyeth's

¹ When citing to docket entries in the two actions, citations will be first to case 03-cv-12366-DPW, and then to 06-cv-11724-DPW, and cited as "03 Dkt. No. ___, 06 Dkt. No. ___".

² Those States are California, Delaware, Florida, Hawaii, Illinois, Indiana, Louisiana, the Commonwealth of Massachusetts, Michigan, Nevada, New York, Tennessee, Texas, Virginia, Wisconsin, and the District of Columbia ("Plaintiff States").

motion. (03 Dkt. Nos. 140, 141, 06 Dkt. Nos. 128, 129.) On February 24, 2010, this Court held a hearing and orally denied Wyeth's motion to dismiss the government complaints. The Court entered an amended scheduling order on March 17, 2010, setting a discovery deadline of February 10, 2011. (03 Dkt. No. 158, 06 Dkt. No. 145.) Wyeth answered the complaints of the United States, the Plaintiff States, and the Relators on April 5, 2010. (03 Dkt. Nos. 163-165, 06 Dkt. Nos. 151-153.) The parties have served initial disclosures and have recently served first requests for production, but no other discovery has been undertaken. (Declaration of Loren F. Snell, Jr. ¶ 13, attached hereto and hereinafter cited as "Snell Decl. ¶__".)

Not until this Court's Orders unsealing the actions in part were docketed on May 8 and 11, 2009, could the Intervening States have had notice of the allegations in these actions and that their interests were at risk. (Snell Decl. ¶¶ 4-5.) In June 2009, all States through their Medicaid Fraud Control Unit ("MFCU") Directors received notice that a National Association of Medicaid Fraud Control Units ("NAMFCU") Team had been appointed to monitor the *qui tam* litigation and coordinate and communicate among the states on behalf of the named Plaintiff States. (Snell Decl. ¶¶ 2, 6.) Thereafter, in accordance with the usual practice of such teams, the NAMFCU Team sought to negotiate statute of limitations tolling agreements with Wyeth on behalf of the non-litigating States. (Snell Decl. ¶ 7.) On December 3, 2009, the MFCU Directors of non-litigating states learned that Wyeth declined to enter into any tolling agreements with the non-litigating States. (Snell Decl. ¶ 8.) On April 22, 2010, Wyeth's counsel confirmed to counsel on behalf of the Intervening States that it continues to decline to enter into tolling agreements with any non-litigating State. (Snell Decl. ¶ 12.) Counsel for the United States confirmed on April 21, 2010, that the United States could not litigate to recover the state share of Medicaid damages on behalf of non-litigating States. (Snell Decl. ¶ 10.) Accordingly, in order to protect their

substantial interests, the Intervening States now move to intervene and respectfully request that this Court grant them leave to file the Multi-State Complaint in Intervention.

RELEVANT FACTUAL AND LEGAL BACKGROUND

The United States, Plaintiff States, and Intervening States allege that from the second calendar quarter of 2001 through the end of 2006, pharmaceutical manufacturer Wyeth falsely reported “Best Prices” for its acid suppressant drugs Protonix oral tablets (“Protonix Oral”) and intravenous Protonix vials (“Protonix IV”) by knowingly omitting prices provided to hospitals under contracts known as Protonix Performance Agreements (“PPAs”). *See generally*, Am. Compl., 03 Dkt. Nos. 119, 126, 06 Dkt. Nos. 108, 115, and the Multi-State Complaint in Intervention submitted herewith. As a result, Wyeth substantially underpaid required rebates to State Medicaid programs. *Id.*

The Medicaid program is a joint federal-state program that provides health care benefits, including coverage for certain drugs, to eligible low income individuals. *See* 42 U.S.C. §§ 1396-1396v. State Medicaid programs are administered through State agencies under State plans that must meet minimum requirements in order to qualify for federal reimbursement of a percentage of program expenditures. 42 U.S.C. § 1396a. The percentage of program expenditures reimbursable by the federal government is the Federal Medical Assistance Percentage (“FMAP”) or “federal share.” 42 U.S.C. § 1396d(b). The States pay the remaining percentage of Medicaid program expenditures known as the “state share.” During the period at issue, the state share of the Intervening States ranged approximately from 25% to 50%. (Snell Decl. ¶ 11.)

The Omnibus Budget Reconciliation Act of 1990 established the Medicaid Best Prices Statute, 42 U.S.C. § 1396r-8. *Massachusetts v. Mylan Labs.*, 357 F. Supp. 2d 314, 318 (D. Mass. 2005). That statute requires drug manufacturers to enter into a Rebate Agreement “on behalf of

States” with the Secretary of Health and Human Services (“Secretary”) before States may receive the federal share for that manufacturer’s drugs covered under State Medicaid programs. 42 U.S.C. § 1396r-8(a). Under the Rebate Agreement, manufacturers pay quarterly rebates directly to participating State Medicaid programs. 42 U.S.C. § 1396r-8(b). Rebate amounts received by a State must be offset against program expenditures for purposes of calculating the federal share during such quarter. 42 U.S.C. § 1396r-8(b)(1)(B). Manufacturers must supply confidential pricing information to the Secretary on a quarterly basis which is then used to calculate the unit rebate amount for each drug. 42 U.S.C. § 1396r-8(b)(3). Included in that pricing information is the manufacturer’s average manufacturer price (“AMP”) and the manufacturer’s best price (“Best Price”). *Id.*

With limited exclusions, the AMP is “the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade.” 42 U.S.C. § 1396r-8(k)(1). For purposes of the drugs at issue here, the Best Price is “the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity” excluding certain specific enumerated exceptions such as prices under state pharmaceutical assistance programs. 42 U.S.C. § 1396r-8(c)(1)(C). Best Price shall be “inclusive of cash discounts, and rebates (other than rebates under this section)” but shall not “take into account prices that are merely nominal in amount.” *Id.* The calculation of the rebates to be paid to the States is dependent upon the pricing information supplied by the manufacturer. 42 U.S.C. § 1396r-8(c).

A Rebate Agreement between Wyeth and the Secretary on behalf of the Department of Health and Human Services and “*all States and the District of Columbia*” was in effect at all relevant times. (Am. Compl. Ex. 20, p. 1, 03 Dkt. No. 126, 06 Dkt. No. 115; Wyeth Ans. ¶ 65,

03 Dkt. No. 165, 06 Dkt. No. 153) (emphasis added). Accordingly, Protonix Oral and Protonix IV were covered drugs under the Intervening States' Medicaid programs, and Wyeth was required to report accurately the AMP and Best Price, and pay the required quarterly rebates to the States with respect to each of those drugs. Wyeth's failure to report the PPA prices paid by hospitals in its Best Price reports to the Secretary resulted in significantly lower rebate payments to the States.

ARGUMENT

This Court should grant the States' Motion to Intervene in these actions as a matter of right. Federal Rule of Civil Procedure 24(a)(2) provides that "[o]n timely motion, the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." A party seeking to intervene pursuant to Rule 24(a)(2) must satisfy four requirements: 1) timeliness; 2) sufficiency of interest; 3) likelihood of interest impairment or impediment; and 4) inadequate representation by existing parties. *Public Service Co. of New Hampshire v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998). The "inherent imprecision" of these requirements "dictates that they 'be read not discretely, but together,' and always in keeping with a commonsense view of the overall litigation." *Id.* (quoting *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 983 (2d Cir. 1984)).

I. The Intervening States' Motion Is Timely

As an initial matter, timeliness should be analyzed less strictly here because the Intervening States seek intervention as a matter of right. While timeliness is always an important requirement, the standards for timeliness are relaxed for a motion for intervention as of right “because greater interests are at stake....” *Banco Popular de Puerto Rico v. Greenblatt*, 964 F.2d 1227, 1230 n.2 (1st Cir. 1992) (quoting *Fiandaca v. Cunningham*, 827 F.2d 825, 833 (1st Cir. 1987)). Furthermore, highly relevant to the determination is the status of the litigation at the time the request for intervention is made. See *R&G Mortgage Corp. v. Federal Home Loan Mortgage Corp.*, 584 F.3d 1, 7 (1st Cir. 2009). “The more advanced the litigation, the more searching the scrutiny which the motion must withstand.” *Greenblatt*, 964 F.2d at 1231. Intervention is favored “[i]n the absence of any discovery or substantive legal progress....” *Geiger v. Foley Hoag LLP Ret. Plan*, 521 F.3d 60, 64-65 (1st Cir. 2008) (allowing intervention after nine months).

Timeliness is assessed based on four factors: “(i) the length of time that the putative intervenor knew or reasonably should have known that his interests were at risk before he moved to intervene; (ii) the prejudice to existing parties should intervention be allowed; (iii) the prejudice to the putative intervenor should intervention be denied; and (iv) any special circumstances militating for or against intervention.” *R&G Mortgage*, 584 F.3d at 7. “Each of these factors must be appraised in light of the posture of the case at the time the motion is made.” *Id.* (citing *Geiger*, 521 F.3d at 65). The timeliness analysis is fact-based and must take into consideration the totality of the circumstances. See *id.* (citing *Greenblatt*, 964 F.2d at 1230-31).

A. The States Have Moved Reasonably Promptly To Intervene

After a potential intervenor has learned that its interests are at a measurable risk, it must act with reasonable promptness. *Greenblatt*, 964 F.2d at 1231. Knowledge of the existence of the litigation “does not invariably trigger one’s obligation to seek intervention, [but] the count begins no later than the time ‘when the intervenor became aware that its interest in the case would no longer be adequately protected by the existing parties.’” *Id.* (quoting *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 785 (1st Cir. 1988)).

The Intervening States have moved to intervene with reasonable promptness. The Intervening States could not have intervened in the litigation prior to May 2009, when this Court’s Order lifting the seal in part was docketed. *Cf. United States of America ex rel., LaCorte v. Merck & Co., Inc.*, 2004 WL 595074, at *3, 2004 U.S. Dist. LEXIS 4860, at *10-11 (E.D. La. Mar. 24, 2004) (noting court would only consider time period after case unsealed, and allowing states to intervene in federal False Claims action). Moreover, the Intervening States did not receive actual notice of the litigation until June 2009, when the MFCU directors were notified of the litigation and the formation of the NAMFCU Team. Thereafter, the States reasonably conducted investigations of the allegations, and attempted to assess both the risk to their interests and whether the existing parties would be able to protect those interests. It was not until December 3, 2009, when the MFCU Directors of non-litigating States learned that Wyeth refused to enter tolling agreements, that the risks to non-litigating States crystallized.³ The few months that elapsed thereafter are insignificant in light of the early stage of the litigation and the diligent efforts of the States to investigate their potential claims, research their relevant state laws

³ The States also waited prudently for this Court’s decision on February 24, 2010, denying Wyeth’s consolidated motion to dismiss prior to seeking leave to intervene.

and organize this consolidated filing for efficiency and the convenience of the existing parties and the Court.

B. The Prejudice To Existing Parties Is Nonexistent

The existing parties are not prejudiced by the delay of the States in seeking to intervene, as evidenced by the fact that all of the parties have stated their consent to the States' Motion. Analysis of this "factor generally focuses on how the untimely entry of an intervenor into the fray may undo the work the parties have already done." *In re Acushnet River & New Bedford Harbor*, 712 F. Supp. 1019, 1025 (D. Mass. 1989). There is no work of the parties to be undone by the entry of the Intervening States in these actions. Wyeth has only recently answered the complaints after having its motions to dismiss denied, initial disclosures have been exchanged, and the first requests for production of documents have been served. Further, the Intervening States are not injecting factual issues distinct from those already presented by the Plaintiff States.

C. Denial Of The Motion Would Prejudice The Intervening States

The prejudice to the Intervening States should this Court deny their motion would be substantial. Determining the level of prejudice to the proposed intervenors if intervention were denied requires a determination of whether the intervenors, if intervention were allowed, "would have 'enjoy[ed] a significant probability of success on the merits.'" *Greenblatt*, 964 F.2d at 1232 (quoting *Garrity v. Gallen*, 697 F.2d 452, 457 (1st Cir. 1983)).

The False Claims Act, 31 U.S.C. § 3732(b), provides that "[t]he district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730." The Intervening States' claims arise from the same

transaction or occurrence that gives rise to the claims already brought by the United States and Plaintiff States – Wyeth’s false reporting of Best Prices for its Protonix Oral and Protonix IV drugs which resulted in lower rebates paid to the States.⁴ The False Claims Act expressly provides that these related state claims may be brought in these federal actions, and a denial of the Intervening States’ Motion would strip them of their statutory right to recover in this Court the state funds that were lost as a result of Wyeth’s conduct. *See Merck*, 2004 WL 595074, at *7, 2004 U.S. Dist. LEXIS 4860, at *23-24 (holding that Louisiana should be allowed to intervene to assert state law claims because section 3732(b) provides court with jurisdiction); *see also In re Pharm. Indus. Average Wholesale Price Litig.*, 509 F. Supp. 2d 82, 93 (D. Mass. 2007) (finding that the legislative history of section 3732(b) reflects that “Congress intended the provision to enhance the options of the states rather than restrict them”). Denial of the States’ Motion would force each State to file its own state court action against Wyeth with a corresponding unnecessary duplication of efforts because both the United States and Wyeth play significant roles in the determination of the required rebate payments to the States. *Wisconsin v. Amgen, Inc.*, 516 F.3d 530, 532 (7th Cir. 2008) (recognizing that section 3732(b) creates form of supplemental jurisdiction for state law claims, not original jurisdiction); *In re Pharm. Indus. AWP Litig.*, 509 F. Supp. 2d at 93; *South Carolina v. Boehringer Ingelheim Roxane, Inc.*, 2007 WL 1232156, at *1 and cases cited therein (D.S.C. Apr. 26, 2007).⁵ In addition, a denial of the

⁴ Wyeth states that during the relevant period it “offered some hospitals discounts” on Protonix Oral and Protonix IV “under contracts known as Protonix Performance Agreements,” and that the prices paid by those hospitals for Protonix Oral were not included in its Best Price Reports to the Centers for Medicare & Medicaid Services (“CMS”). (Wyeth Ans. to Am. Compl. of the States and District of Columbia at 2, 03 Dkt. No. 165, 06 Dkt. No. 153).

⁵ Because all of the Courts that have considered the question of whether 31 U.S.C. § 3732(b) confers original jurisdiction have found in the negative, the Intervening States are not seeking permissive intervention under Fed. R. Civ. P. 24(b) due to the requirement of an independent basis for jurisdiction. *International Paper Co. v. Inhabitants of Town of Jay, Me.*, 887 F.2d 338, 345 (1st Cir. 1989); *Moosehead Sanitary Dist. v. S.G. Phillips Corp.*, 610 F.2d 49, 52 n.5 (1st Cir. 1979).

Intervening States' motion would lead to an anomalous result – one where only Plaintiff States chosen by the Relator may seek recovery of state funds pursuant to state statutes and common law in a federal False Claims Act case – a limitation not reflected in the clear language of section 3732(b).

D. Special Circumstances Support Granting Intervention

These actions remained under seal for several years while an appropriate investigation of the allegations was conducted by the United States. The Intervening States were unaware of the allegations during that time period. After the actions were unsealed, rather than seek leave to intervene prematurely, the Intervening States diligently conducted independent investigations and analysis of the litigation, consulted with the Plaintiff States, and coordinated efforts to minimize the impact of intervention on the Court and existing parties. In light of the breadth and complexity of the litigation, the time that has elapsed reflects careful consideration by the States who now seek to intervene only after concluding that intervention is necessary to protect their substantial interests. These special circumstances militate in favor of granting the States' Motion.

II. The States Have Substantial Interests Relating To The Property Or Transaction

As described above, each of the Intervening States has direct significantly protectable economic and policy interests in this litigation. Potential economic harm “warrants serious consideration.” *Patch*, 136 F.3d at 205. Recognizing that the approach to analysis of the sufficiency of interests varies among the Courts of Appeals, the First Circuit has not adopted either of the two approaches adopted by most other circuits. *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 41-42 (1st Cir. 1992). Instead, the First Circuit requires that the intervenor's claims “bear a sufficiently close relationship” to the dispute between the original parties, and that the interests at issue “be direct, not contingent.” *Id.*

The Intervening States are, like the Plaintiff States, part of the “paradigmatic cooperative federalism” that is the Medicaid program, a program through which “the federal and state governments share the common goal of reducing drug costs.” *In re Pharm. Indus. AWP Litig.*, 321 F. Supp. 2d 187, 198 (D. Mass. 2004). “[M]atters of public health and medical fee regulation have been a field traditionally occupied by the states, and states have historically played a significant role in investigating and prosecuting Medicaid fraud.” *Id.*

The Intervening States have direct and substantial interests in ensuring that Wyeth pay the required rebates for its drugs to their State Medicaid programs and in recovering the substantial damages that they have suffered as a result of Wyeth’s alleged illegal conduct at issue in this litigation. An intervenor has a sufficient interest in the litigation where “contractual rights may be affected by the proposed remedy.” *B. Fernandez & Hnos, Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 545 (1st Cir. 2006). First, the Rebate Agreement expressly provides that it is executed on “behalf of ... all States.” (Am. Compl. Ex. 20, p. 1, 03 Dkt. No. 126, 06 Dkt. No. 115.) Second, the Intervening States are “clearly within the class of entities for whose benefit the Best Prices Statute was enacted.” *Mylan*, 357 F. Supp. 2d. at 319. Here, the economic harm suffered directly by the Intervening States as third party beneficiaries to the Rebate Agreement is sufficient to establish their interest relating to the property or transaction.

The analysis does not end there. The Intervening States also have significant policy interests that include an interest in the regulation and administration of their State Medicaid programs, and in the enforcement of their respective state laws. *Merck*, 2004 WL 595074, at *5, 2004 U.S. Dist. Lexis 4860, at *16-17. Accordingly, the claims of the Intervening States bear a

sufficiently close relationship to the dispute between the original parties, and their interests are direct, not contingent.⁶

III. Disposition Of This Action Would Impair The States' Ability To Protect Their Interests

Disposition of these actions would impair the Intervening States' ability to protect their substantial interests. Under certain circumstances, the "adverse impact of stare decisis standing alone may be sufficient to satisfy the practical impairment requirement." *International Paper Co. v. Inhabitants of the Town of Jay, Me.*, 887 F.2d 338, 345 (1st Cir. 1989) (quoting 3B J. Moore, MOORE'S FEDERAL PRACTICE ¶ 24.07[3], at 24-65 (2d ed. 1987)). While the United States and Plaintiff States may have similar positions on factual and legal issues, the Intervening States should not be required to rely solely upon them to advance their individual interests.

IV. The Existing Parties Inadequately Represent The States' Interests

The States need only make a minimal showing that the representation afforded by the existing parties likely will prove inadequate, not that it is inadequate. *See Mosbacher*, 966 F.2d at 44; *Patch*, 136 F.3d at 207. This is particularly true when the proposed intervenor has a "tangible and substantial stake in the outcome." *Kellogg*, 440 F.3d at 546. In conducting an analysis regarding adequacy of representation, three inquiries have been utilized: "1) [a]re the interests of a present party in the suit sufficiently similar to that of the absentee such that the legal arguments of the latter will undoubtedly be made by the former; 2) is that present party capable and willing to make such arguments; and 3) if permitted to intervene, would the

⁶ The United States Supreme Court has reserved judgment, and the First Circuit has not yet decided the issue of whether intervenors are required to demonstrate standing at the time they seek leave to intervene. *Diamond v. Charles*, 476 U.S. 54, 68-69 (1986); *Cotter v. Mass. Ass'n of Minority Law Enforcement Officers*, 219 F.3d 31, 33 (1st Cir. 2000). In the "ordinary case, an applicant who satisfies the 'interest' requirement of the intervention rule is almost always going to have a sufficient stake in the controversy to satisfy Article III as well." *Cotter*, 219 F.3d at 34. The Intervening States contend that their substantial interests in these actions satisfy the standing requirement.

intervenor add some necessary element to the proceedings which would not be covered by the parties in the suit?” *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 144 (1st Cir. 1982) (quoting *Blake v. Pallan*, 554 F.2d 947, 954-55 (9th Cir. 1977)). Where those seeking intervention have the “same ultimate goal as a party already in the suit, courts have applied a presumption of adequate representation.” *Moosehead Sanitary Dist. v. S.G. Phillips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979). To overcome this presumption, a putative intervenor must simply proffer an adequate explanation of why that presumption does not suffice. *State v. Director, U.S. Fish and Wildlife Service*, 262 F.3d 13, 19 (1st Cir. 2001).

While the United States, Plaintiff States, Relators, and Intervening States have similar goals in ensuring that Wyeth comply with the Best Prices Statute and the Rebate Agreement, the current parties are not in a position to assert, enforce, and litigate the individual state law claims of the Intervening States and recover damages for the States. The United States has confirmed that it cannot litigate state law claims on behalf of the States. This alone is sufficient to rebut a presumption of adequate representation by the existing parties.

Moreover, each State plays a significant role and has its own responsibilities in the administration of Medicaid rebates, including supplying information regarding drug utilization. *See, e.g.*, 42 U.S.C. § 1396r-8(b)(2). Therefore, including the States as parties will facilitate each State’s production of relevant information regarding its coverage of drugs, including utilization information required to calculate rebate amounts. Permitting the States to intervene and bring their information and expertise to bear will enhance the likelihood that the benefits of the joint federal-state Medicaid program reach its intended recipients.

Because the Intervening States seek nothing more than an ability to assert their state law claims, the existing parties may not adequately represent their interests and the required showing has been made.

CONCLUSION

For the reasons stated above, the States of Colorado, Kansas, Commonwealth of Kentucky, Maine, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, and Wyoming respectfully request that the Court grant the States' Motion for Leave to Intervene and file the Multi-State Complaint in Intervention pursuant to Fed. R. Civ. P. 24(a)(2).

Dated: May 7, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of these documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on May 7, 2010.

Dated: May 7, 2010

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